

1  
2  
3  
4  
5  
6 IN THE UNITED STATES DISTRICT COURT  
7  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
9

10 UNITED STATES OF AMERICA,

No. CR 08-0730 WHA

11 Plaintiff,

12 v.

13 MORIS FLORES, *et al.*,

14 Defendants.  
15 \_\_\_\_\_/

**ORDER RE JOINT STATEMENT  
RELATING TO DEFENDANT  
MORIS FLORES' MOTION TO  
SUPPRESS EVIDENCE SEIZED  
FROM 80 FOREST GROVE**

16 Defendant Moris Flores previously moved to exclude all evidence seized from Apartment  
17 22 of 80 Forest Grove in Daly City on August 26, 2008, on the basis that the search warrant was  
18 facially overbroad and insufficiently particular (Dkt. No. 2000). A September 22 order denied the  
19 motion, but found that certain items outside the scope of the warrant may have been improperly  
20 seized during the search (Dkt. No. 2300). The order accordingly requested the parties to meet and  
21 confer to determine whether the government sought to introduce any items into evidence that  
22 defendant Flores contends were seized outside the scope of the warrant. The parties did so and  
23 submitted a joint statement on October 26 (Dkt. No. 2441). In it, the parties disputed whether the  
24 following items were seized outside the scope of the search warrant: (1) two disposable cameras;  
25 (2) film negatives; (3) a lock of hair; and (4) photographs of defendant Flores that do not contain  
26 gang signs. Photographs of the disputed items were submitted for review. Based on the record to  
27 date, this order finds that the lock of hair and the contested photographs were seized outside the  
28 scope of the warrant and must be suppressed. The disposable cameras and film negatives,  
however, were permissibly seized pursuant to the warrant.

1 The lock of hair wrapped in tin foil did not plausibly fall within the description of items to  
2 be seized. The search warrant authorized seizure of: "Firearm: described as a shotgun,  
3 ammunition, blue bandanna, white t shirt, blue jeans, white tennis shoes, indicia, photographs,  
4 cell phone(s), videos, and any materials that may be construed to be associated with a criminal  
5 street gang, specifically M.S.-13" (Dkt. No. 2000-1 at 3). The warrant clearly did not authorize  
6 the seizure of hair and the hair cannot reasonably be construed to be gang-related. Although odd,  
7 the hair was not contraband and its seizure was not authorized.

8 The photographs at issue similarly did not fall within the scope of the warrant. In its  
9 opposition to defendant Flores' motion, the government specifically argued that the  
10 "photographs" provision of the warrant only authorized seizure of photographs that evinced  
11 association with MS-13 (Opp. 20). This interpretation of the warrant prevailed and has not  
12 changed. Accordingly, unless any of the disputed photographs at issue evince gang association,  
13 they were seized outside the scope of the warrant. The government's contention that certain  
14 photographs were seized permissibly because they were evidence of defendant Flores'  
15 "association" with Manuel Franco or their occupation and control over the premises is not  
16 convincing. The warrant authorized seizure of photographs indicating association with *MS-13* —  
17 not photographs that may illustrate defendant Flores' *personal* associations or residence.

18 In contrast, the *seizure* of the disposable cameras and film negatives was authorized by the  
19 warrant. The warrant authorized seizure of photographs indicating association with MS-13, and it  
20 would have been reasonable for the officers to believe that the disposable cameras and film  
21 negatives contained such material. Officers may seize items they reasonably believe contain  
22 materials described in a warrant. *United States v. Giberson*, 527 F.3d 882, 887 (9th Cir. 2008).

23  
24 **IT IS SO ORDERED.**

25  
26 Dated: October 29, 2010.

27   
28 \_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE